Supreme Court, U. S.
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No. 79-1448

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

NAGATA BROTHERS FARMS,

Petitioner,

vs.

THE AGRICULTURAL LABOR RELATIONS BOARD OF THE STATE OF CALIFORNIA,

Respondent,

and

UNITED FARM WORKERS OF AMERICA, AFL-CIO,

Real Party in Interest.

REPLY BRIEF IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

TO THE SUPREME COURT OF THE STATE OF CALIFORNIA.

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The petitioner, NAGATA BROTHERS FARMS, submits this reply brief in support of its request for review of the California Supreme Court's denial of a hearing to review the decision and order of the Agricultural Labor Relations Board, State of California.

I

THIS COURT HAS JURISDICTION

A. The ALRB's Order Is Final.

The ALRB's order is final for purposes of this Court's jurisdiction. The California Labor Code outlines a very narrow procedure for review of the merits of an ALRB decision. A

petition for review must be filed within thirty (30) days of issuance of the Board's order.[1] Issuance occurs when an order of the Board is mailed to a party to the proceedings. *Sunnyside Nurseries, Inc.* v. *Agricultural Labor Relations Board,* 93 Cal.App.3d 922 (1979). A final order of the ALRB is a decision of the Board either dismissing an unfair labor practice complaint *or directing a remedy* for an unfair labor practice. *Belridge Farms* v. *Agricultural Labor Relations Board,* 21 Cal.3d 551 (1978).

Under California Labor Code section 1160.3, an order of the ALRB cannot be modified or altered by the ALRB after it has been filed with a California court.[2] California Labor Code section 1160.8 also provides that the content of the order cannot be challenged during an enforcement proceeding.[3] Therefore, this employer has pursued its only avenue of judicial review of constitutional questions through its petition for certiorari.

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[1] California Labor Code § 1160.8.

[2] California Labor Code § 1160.3 provides in pertinent part:
"Until the record in a case shall have been filed in a court, as provided in this chapter, the Board may, at any time upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it."
In this case, the ALRB certified the record to the court of appeal on June 27, 1979.

[3] California Labor Code § 1160.8 provides in pertinent part:
"If the time for review of the board order has lapsed, and the person has not voluntarily complied with the board's order, the board may apply to the superior court in any county in which the unfair labor practice occurred or wherein such person resides or transacts business for enforcement of its order. If after hearing, the court determines that the order was issued pursuant to procedures established by the board and that the person refuses to comply with the order, the court shall enforce such order by writ of injunction or other proper process. *The court shall not review the merits of the order.*" (Emphasis added.)

Supreme Court review of an administrative order is appropriate even if the order or decision may subsequently be revised if there is no other way to preserve the constitutional issue. *North Dakota Pharmacy Board* v. *Snyder's Stores,* 414 U.S. 156 (1973). In addition, review of an administrative order is appropriate when denial of review would result in an unnecessary waste of time and energy in the judicial system. *Mills* v. *Alabama,* 384 U.S. 214 (1966). This Court should note that neither the real party in interest nor the ALRB has ever raised any question with respect to the finality of the ALRB's order in their briefs before either the California Court of Appeal or the California Supreme Court.

Republic Natural Gas Co. v. *Oklahoma,* 334 U.S. 62 (1948), cited by the ALRB and the UFW is not applicable here. The basis for the Court's decision in *Republic Natural Gas* is that price-fixing issues remained unresolved. According to the Court, price-fixing could easily raise new "inherent" constitutional claims. Furthermore, adequate compensation could resolve the controversy without further litigation. In this case, no new constitutional issues will be raised by any enforcement actions contemplated by the ALRB. The constitutional controversy in this case cannot be resolved without litigation so long as the ALRB accords union organizers unfettered vehicular access to portions of an employer's private property where illegal aliens or other individuals may be residing without the permission of the property owner. The remedy and order which petitioner objects to was based on this finding.[4] *Any* access to petitioner's property pursuant to this unconstitutional order would be in violation of petitioner's rights.

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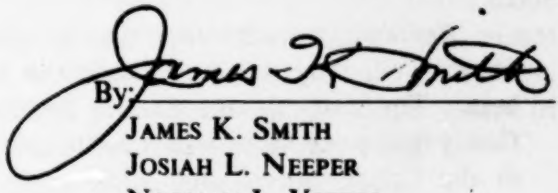
[4] The ALRB's decision and order states:
"In our view, the fact that respondent violated a right of access based on the U.S. Constitution rather than on our regulations does not make expanded access any less appropriate as a remedy." Appendix B to Petitioner's Writ of Certiorari, p. 4.

B. Petitioner Has Promptly and Consistently Raised Each Constitutional Objection.

Petitioner has consistently raised its constitutional objections to the decision and order of the ALRB to the California Court of Appeal and the California Supreme Court. Petitioner's due process objection was not raised prior to its petition for certiorari because petitioner's procedural due process argument did not fully ripen until the California Supreme Court summarily dismissed its petition for review.

Respectfully submitted,



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